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IN THE

Supreme Court of the United States

October Term, 1971

No. 71-1031

LEONARD TONASKET,
Appellant,

v.

THE STATE OF WASHINGTON and
THE SUPERVISOR OF THE TAX COMMISSION
OF THE STATE OF WASHINGTON,
Respondents.

REPLY BRIEF OF APPELLANT

INTRODUCTION

In their brief, appellees ask the Supreme Court to abandon its traditional, conservative principles of federal Indian law and to adopt radical new principles instead. Appellees ask the Supreme Court to reject the long-standing twin principles that (1) ambiguities in statutes affecting Indians will be resolved from the standpoint of the Indians, and (2) federal statutes, Indian tax immunities, federal Indian policies, and sovereign tribal powers will not be deemed repealed by implication. Appellees ask the Supreme Court to adopt instead the principles that (1) Public Law 83-280 permits all state excise tax laws to apply to Indians *by implication*, and (2) Public Law 83-280 destroys all pow-

ers of tribal sovereignty inconsistent with state law *unless explicitly preserved by Congress.*

In short, appellees ask the Supreme Court to view Public Law 83-280 as a termination bill which effectively destroys the tribal sovereignty of the Colville Confederated Tribes. Although appellees repeatedly deny viewing Public Law 83-280 as a termination statute in any sense of the word, their protest is belied by their brief which states at page 19:

> "Furthermore, if Congress had not intended that Indian sovereignty or self-government be subservient to state laws, it would not have been necessary for it to enact 28 U.S.C. § 1360(c), *supra.*"

And again, at page 34:

> ". . . tribal laws are no longer effective to the extent inconsistent with general state laws and the federal government has removed itself from general supervision of Indian affairs on Indian reservations."

Thus, appellees consider Public Law 83-280 a grant of *plenary jurisdiction* over Indians and Indian country to the State of Washington with only narrow exceptions carved out in Sections 2(b) and 4(b) of the act.

At the same time appellees take an anomalously narrow view of this case and its legal ramifications. In their brief appellees omit the following significant statutes cited by appellant as not relevant:

> 25 U.S.C. § 348 (General Allotment Act of 1887)
>
> 25 C.F.R. § 91.12, 91.13 (1965) (regulations of the Bureau of Indian Affairs pertaining to loans of tribal funds).
>
> Constitution and By-Laws of the Confederated Tribes of the Colville Indian Reservation, Washington.

Colville Tobacco Ordinance As Amended, Resolution 1972-375.

Those portions of Title 82 of the Revised Code of Washington enumerating State excise taxes quoted on pages 6 and 7 of appellant's brief.

In short, appellees attempt to eliminate from consideration all statutes and authorities upon which Indian tax immunities and the tribal power to tax are founded.

Appellees first state that the question presented is whether Public Law 83-280 and State statutes assuming Indian jurisdiction removed any existing impediment which might otherwise preclude the state of Washington from enforcing its cigarette tax laws against the appellant in conducting a retail cigarette business on his restricted land on the Colville Tribe reservation. (Appellees' Br., p. 2-3) But then at the beginning of their argument (Appellees' Br., p. 7), appellees blithely state that the controversy in this cause "is limited" to determining whether the appellant can sell tax-free cigarettes to non-Indians under Washington state law.

The opinion of the Washington Court is not "limited" in applicability to appellant's sales of cigarettes to non-Indians, or, indeed, to cigarette sales at all. As stated by the Washington Court in unmistakably plain language:

> "The trial court was of the opinion that *the authorization contained in Public Law No. 83-280 was plenary, with only the limitations expressed therein*, and gave the states power to regulate the merchandising activities of Indians in the same way that they regulate such activities of their citizens generally, and to levy excise taxes upon them. *We agree.*" (Emphasis supplied)

It is impossible to draw from this language appellees' conclusions that:

> "We are thus here concerned *solely* with the enforcement of the Washington cigarette tax against the appellant to the extent that he sells cigarettes *to persons other than Colville Indians.* (Emphasis supplied) (Appellees' Br., p. 8)

Since no language of limitation in Public Law 83-280 refers to Washington state excise tax laws contained in Title 82 of the Revised Code of Washington, the obvious implication of the Washington court's opinion is that Title 82 applies in full force on the Colville Indian Reservation to all merchandising activities without exception.

1. Appellant's Status as a Federal Indian Trader Cannot Be Denied

Appellees begin their "Statement of the Case" (Appellees' Br., p. 3) with a vigorous attack upon the letters set forth on pages 3-5 of the Single Appendix as "never introduced in evidence", and upon the Colville Tobacco Ordinance and Chapter 157, Washington Laws, 1972, 1st Ex. Sess., both set forth in Appendix A to appellant's brief, as "not properly before the court." The essence of appellees' objections is their position that appellant was not a federal Indian trader at the time this case arose. Appellees wish to deny both federal sanction of appellant's merchandising activities as a retail tobacco merchant on the Colville Indian Reservation, and application of the decision in *Warren Trading Post v. Arizona Tax Commission,* 380 U.S. 685 (1965), to this case. (Appellees' Br., p. 40).

No one is more painfully aware than appellant of the inadequacies of the record below. Suffice it to say that

present counsel was in no way involved at the trial level.

Nevertheless, the record is clearly sufficient to enable the Supreme Court to arrive at a properly grounded decision. Appellant testified in part as follows: (Single App., p. 32):

"Q. And what type of business building do you have located on these lands?

"A. It is a little store.

"Q. Can you describe it?

"A. You mean—

"Q. What is it made of and what did it cost you to construct?

"A. Around $6,000.00.

"Q. And where did you acquire the funds to build your place of business?

"A. From the Tribal Loan Office.

"Q. By that you mean you used Tribal funds?

"A. Yes, sir."

Appellant's loan of $6,000.00 of Tribal funds for construction of his store building can be easily demonstrated to be federal sanction of his retail tobacco business on the reservation. The governing provisions of the Code of Federal Regulations, of which the Supreme Court will take judicial notice, pursuant to 44 U.S.C. § 1507, are 25 C.F.R. § 91.12 and § 91.13.

25 C.F.R. § 91.12 entitled "Tribal Funds" provides in part as follows:

> "(a) Tribal funds may be advanced to corporations and unincorporated tribes and bands, when authorized by Congress, upon request of the governing body and approval by the Commissioner, *for the establishment of enterprises* and for relending in accord-

ance with paragraphs (b) and (c) of this section and § 91.13." (Emphasis supplied)

25 C.F.R. § 91.13 entitled "Relending by Borrower", in turn provides in part:

"(a) Funds loaned by the United States to a corporation, tribe, band, or credit association, may be reloaned by it, *with the approval of the Commissioner or his authorized representative*, but the Commissioner may authorize such lenders to approve applications for particular types of loans up to a specified amount.

"(b) Such loans shall be secured by such securities as the lender and the approving officer may require. Individually owned trust or restricted land may be mortgaged for such loans in accordance with § 121.52 of this chapter. All securing documents shall be filed or recorded in accordance with State or Territorial law." (Emphasis supplied)

Thus, appellant's $6,000.00 loan of Tribal funds required specific approval of the Commissioner of Indian Affairs or his authorized representative. However, the federal government went even further—it specifically approved an additional cigarette inventory loan to appellant in the sum of $800.00. It is upon this latter point that appellees' objection rests.

As appellees correctly state, the two letters which show approval of appellant's $800.00 cigarette inventory loan by the Bureau of Indian Affairs were never introduced into evidence but were supplied to the Washington court at the time of oral argument on May 25, 1972. Each is a true copy of a letter in the official Bureau of Indian Affairs records in the Colville Indian Agency of the Bureau of Indian Affairs, and each is certified to by W. Sherwin Broadhead, Superintendent. Their authenticity is beyond question, and indeed appellees do not now question their

authenticity. Rather, appellees contend that they are not part of the record for consideration by the court.

But the appellees did not object to their being made part of the certified record either in oral argument before the Washington Court (see Transcript of Oral Argument) or upon receiving the Index and Clerk's Certificate on approximately January 10, 1972, indicating that the two letters were included in the certified record at pages 117 and 118, respectively. In the Clerk's Certificate executed on January 7, 1972,[1] Mr. William M. Lowry, Clerk of the Supreme Court of the State of Washington affirms that the certified record including the two letters is transmitted to "the Supreme Court of the United States as a record on appeal."

Nor did appellees object to appellant's designating the two letters for inclusion in the Single Appendix (see Appellant's Designation for Appendix and Statement of Issues Presented for Review). Since appellees have never moved to have the two matters excluded from the certified record, appellees may not now contend that the two letters are "not properly before the court."

The Supreme Court is free to consider anything which is a part of the certified record. In *McClellan v. Carland*, 217 U.S. 268 (1910), the Supreme Court stated:

> "We must take the case as it is presented here upon the stipulated return to the writ of certiorari on the record as presented to the Circuit Court of Appeals." 217 U.S. at 283.

Again in *Lawn v. United States*, 355 U.S. 339 (1958), the Supreme Court stated:

> ". . . we must look only to the certified record in

1. R. 172.

deciding questions presented. *McClellan v. Carland*, 217 U.S. 268." 355 U.S. at 354.

In the more recent case of *Lear Inc. v. Adkins*, 395 U.S. 653 (1969) the Supreme Court considered the question of documents not submitted in evidence at trial but considered a part of the record on appeal. The Supreme Court noted:

> "Lear argues that this original agreement was not submitted in evidence at trial and so should not be considered a part of the record on appeal. The California Supreme Court, however, treated the agreement as an important part of the record before it, 67 Cal.2d, at 906, 435 P.2d., at 335; and so we are free to refer to it." 395 U.S. at 657, n. 1.

Since the Washington Court made no direct reference to the letters in its opinion, *Lear* is not directly on point, but from *McClellan* and *Lawn* it would seem that anything which is a part of the certified record on appeal is properly before the Supreme Court and can be considered by it. Further, there are compelling grounds for the proposition that the Supreme Court should take judicial notice of the two letters.

First, the Supreme Court will take judicial notice of official letters of federal agencies setting forth administrative practice. F. Wiener, *Briefing and Arguing Federal Appeals*, 251 (1961); *Vermilya-Brown Co. v. Connell*, 335 U.S. 377 (1948); *Foley Bros. v. Filardo*, 336 U.S. 281 (1949).

The administrative practice here questioned by appellees is the practice of the Bureau of Indian Affairs in making a cigarette inventory loan to appellant to enable him to sell tax free cigarettes on the Colville Indian Reservation. This was made clear by Mr. Michael Hansen, Assistant At-

torney General who argued this matter for appellees before the Washington Court. Mr. Hansen stated at page 26 of the Transcript of Oral Argument:

> "And as we again assert, most strongly, the *Bureau of Indian Affairs* and the State of Washington *has not and to date will not provide funds, loan funds for an Indian for the express purpose of selling unstamped cigarettes.* (Emphasis supplied)

But in the letter of April 9, 1964, the Superintendent of the Colville Indian Agency, recommending approval of the cigarette inventory loan to appellant, states:

> "Their primary income from the store in Omak is from the sale of cigarettes since they are located on trust land and able to sell cigarettes tax free." (Single App., p. 3)

Thus the two letters are official letters setting forth administrative practice of the Bureau of Indian Affairs in this case and should be judicially noticed by the Supreme Court under the rule of *Vermilya-Brown Co.*, and *Foley Bros.*

Additionally, both the Model Code of Evidence of the American Law Institute and the Uniform Rules of Evidence Act provide that a court may upon its own motion take judicial notice of "specific facts and propositions of generalized knowledge which are capable of immediate and accurate determination by resort to easily accessible sources of indisputable accuracy." The two letters clearly fall within that definition.

Finally, in his article "A System of Judicial Notice Based on Fairness and Convenience,"[2] Professor Kenneth Culp Davis states the ultimate principle governing judicial notice as follows:

2. *Perspectives of Law*, Essays for Austin W. Scott, Little, Brown & Co., Pound, 1964, p. 94.

> "The ultimate principle is that extra-record facts should be assumed whenever it is convenient to assume them, except that convenience should always yield to the requirement of procedural fairness that parties should have opportunity to meet in the appropriate fashion all facts that influence the disposition of the case."

Appellant submits that by either test, the Supreme Court should judicially notice the two letters which demonstrate beyond doubt that appellant operated as a federal Indian trader in his merchandising activities on the Colville Indian Reservation.

The fact that appellant was not issued a federal Indian trader's license until February 28, 1972 is of no moment. The practice of the Commissioner in 1967 was not to issue traders' licenses in Washington, as counsel for appellant[3] pointed out to the Washington Court in oral argument. The Commissioner refused to issue traders' licenses on the Makah Indian Reservation at counsel's request on behalf of the Makah Indian Tribe.[4] The Washington Court recognized the administrative practice of the Commissioner in this regard.[5]

The Commissioner is even yet reluctant to issue traders' licenses to full-blood Indians, as shown in the memorandum of approval of the Colville Tobacco Ordinance dated October 25, 1972:[6]

> "The provision of the ordinance does not recognize the provision of the law as well as the Secretarial regulations *which permit trading by an Indian of the*

3. Not counsel for the State, as erroneously reported in the Opinions of the Washington Court, 79 Wn.2d 607, 616 n. 4.

4. Transcript of Oral Argument, p. 15, ll. 11-16; p. 27, ll. 11-17.

5. 79 Wn.2d 607, 616 n. 4.

6. 37 F.R. 25181, November 28, 1972.

full blood within an Indian reservation without obtaining a Federal Trader's License (25 USC ∫ 264, 25 CFR 25.13). Should an Indian of the full blood of the Colville Tribes otherwise comply with the provisions of the ordinance governing the sale, distribution and taxation of tobacco products, he cannot be required to obtain a Trader's License as none would be issued to him by the Superintendent and he cannot be denied an operator's license under the ordinance for such reason." (Emphasis supplied)

The conclusion is inescapable—appellant's status as an unlicensed federal Indian trader was sanctioned by the federal government in 1967 at the time this action arose, and he is now a licensed federal Indian trader.

Since the Colville Tobacco Ordinance makes the distribution and sale of all tobacco products on the Reservation a tribal enterprise, and since appellant's business is now a licensed tribal retail outlet operated pursuant to the ordinance, a tribal license, and a federal Indian trader's license, the Ordinance is "properly before the court".

Rule 41(5) authorizes the presentation of "late authorities, newly enacted legislation, or other intervening matters." The Colville Tobacco Ordinance is undeniably relevant to this case as newly enacted legislation. It was published in the Federal Register on November 28, 1972 and appears at 37 F.R. 25181. Accordingly, the Ordinance should be judicially noticed by the Supreme Court in accordance with the "Federal Register Act", 44 U.S.C. § 1507, which provides:

> "The contents of the Federal Register shall be judicially noticed and without prejudice to any other mode of citation, may be cited by volume and page number."

Wei v. Robinson, 246 F.2d 739 (7th Cir., 1957) cert. den. 355 U.S. 879 (1957).

Chapter 157, Washington Laws, 1972, 1st Ex. Sess., Section 7, provides that any person may purchase and possess for personal use two cartons of cigarettes at any single time without incurring tax liability under Washington law. This new law legitimatizes to that extent non-Indian purchases from Indian sellers of tax free cigarettes, and, again, the statute is undeniably relevant to this case as newly enacted legislation. In the exercise of its general appellant jurisdiction, the Supreme Court takes notice of the laws of every state. *Mills v. Green*, 159 U.S. 651 (1895); *Gormley v. Bunyan*, 138 U.S. 623 (1891).

2. Newly Obtained Congressional History of Public Law 83-280 Proves That the Act Does Not Grant Taxing Power to the State

Both the Washington Court and counsel for the parties in this case have been severely hampered in not having an absolutely clear indication of whether Public Law 83-280 was intended by Congress to constitute a grant of taxing power to the State of Washington. The difficulty arose from non-publication of the Hearing on HR 1063 Before the Subcommittee on Indian Affairs of the Committee on Interior and Insular Affairs, House of Representatives, 83d Congress, 1st Session (June 29, 1953), and the Hearing on HR 1063 Before the Committee on Interior and Insular Affairs, House of Representatives, 83d Cong., 1st Session (July 15, 1953).

These two hearing reports were recently obtained in the National Archives by the Solicitor General and have been made available to counsel for appellant and appellees. In light of the two hearing reports, the statement in appellant's brief that one discovers nowhere in the entire legis-

lative history of the Act any reference to taxation must now be corrected. The Subcommittee Report of June 29, 1953 does contain a discussion of possible tax consequences of Public Law 83-280. And it confirms appellant's previous conclusion that Congress very definitely did not intend Public Law 83-280 to constitute a grant of taxing power to the states.

In the Subcommittee Report, the following dialogue occurs between Congressman Clifton Young of Nevada, Congressman Wesley A. D'Ewart of Montana, Congressman E. Y. Berry of South Dakota, and Mr. Harry A. Sellery, Jr., Chief Counsel, Bureau of Indian Affairs:

> "MR. YOUNG: Does your bill limit the provision for Federal assistance to States in defraying the increased expenses of the courts in connection with the widening of the jurisdiction that the bill encompasses?
>
> "MR. SELLERY: No; it does not.
>
> "MR. YOUNG: *Do you think it would be necessary to provide for some payment, inasmuch as the great portion of Indian lands are not subject to taxation?*
>
> "MR. SELLERY: The Department's report on the Nevada bill has some comments on that. If it is appropriate, I would like to read this in that connection. Generally, the Department's views are that if we started on the processes of Federal financial assistance or subsidization of law enforcement activities among the Indians, it might turn out to be a rather costly program, and *it is a problem which the States should deal with and accept without Federal financial assistance*; otherwise there will be some tendency, the Department believes, for the Indian to be thought of and perhaps to think of himself because of the financial assistance which comes from the Federal Government as still somewhat a member of a race or group which is set apart from other citizens of the State. And it is desired to give him and the other citizens of the State

the feeling of a conviction that he is in the same status and has access to the same services, including the courts, as other citizens of the State who are not Indians.

"MR. YOUNG: That would not quite be true, though; would it? *Because for the most part he does not pay any taxes.*

"MR. SELLERY: *No. There is that difference.*

"MR. YOUNG: A rather sizable difference in not paying for the courts or paying for the increased expenses for judicial proceedings.

"MR. SELLERY: The Indians, of course, do pay other forms of taxes. I do not know how the courts of Nevada are supported financially, but the Indians do pay the sales tax and other taxes.

"MR. YOUNG: But no income tax or corporation tax or profits tax. *You understand a large portion of the land is held in trust and therefore is not subject to tax.*

"MR. SELLERY: *That is correct.*

"MR. YOUNG: So far as my State is concerned, it would be a large burden on existing costs of judicial procedure. I think it is only right that the Federal Government should make some contribution for that. You seem to differentiate. I think there is a differentiation, too, in that they are not paying taxes.

"MR. SELLERY: *I will concede your point that they are not paying taxes. The Department has recommended, nevertheless, that no financial assistance be afforded to the States.*" (Emphasis supplied) (Subcommittee Report, p. 8, l. 18 through p. 10, l. 15.)

Later in the Subcommittee Hearing the following dialogue occurred:

"MR. D'EWART: I note that the Saylor Bill has a Section 5, *which would make possible compensation of the Federal Government for the expense of enforcement.*

"MR. SELLERY: Yes, sir.

"MR. D'EWART: I think that is the Poulson Bill.

"MR. SELLERY: Yes, sir. That is also in Congressman Young's Bill for Nevada.

"MR. D'EWART: Yes.

"MR. SELLERY: With respect to a comment I had from Congressman Berry after the hearings adjourned regarding *the problem of whether or not the state or local units would be willing to assume the entire cost of administration of civil and criminal jurisdicton* if the bills were passed, without derogation to the Department's position—which, as I indicated in the Nevada Bill, is adverse to that proposal—I did discuss at luncheon with the Acting Commissioner the problem which Congressman Berry had posed, and he suggested that if that proposal were to be accepted by the Committee he believed it would be more appropriate to have the administration of any Federal financial assistance in the hands of the Attorney General of the Department of Justice rather than the Department of Interior. That is not to be understood as a recommendation, Congressman; but *if the Congress in its wisdom sees fit to provide for such assistance,* the Acting Commissioner recommends that it be not to amend the Johnson-O'Malley Act, as someone suggested, but to provide a special authorization in whatever form is required if any such authorization is required to the Attorney General to administer any program of Federal financial assistance to states or political subdivisions.

"MR. BERRY: Why could it not be handled under the Johnson-O'Malley Act?

"MR. SELLERY: The Johnson-O'Malley Act confers the power on the Secretary of Interior. Mr. Greenwood's belief is that *the general administration of law and order being under the Attorney General in the Department of Justice, with the use of the much more extended facilities which the Department has through the FBI, makes that desirable.* The Acting Commissioner thought you might get a more reasoned judg-

> ment on the amount of financial assistance which the state needed. He was just suggesting this as an alternative. No one would deny, I think, that the Johnson-O'Malley Act could be so amended. *He believed that rather than continuing this power in the Secretary in connection with the law and order it would be preferable if the Congress wishes to do that to give that responsibility to the Department of Justice.* There is no doubt that the Department could do it. He just thought it would be more efficient if done by the Department of Justice." (Emphasis supplied) (Subcommittee Report, p. 14, l. 7 through p. 16, l. 4).

Salient points in this dialogue among Congressmen on the Subcommittee representing states with large Indian populations are the following:

First, Congress was well aware of the impending financial burdens to states assuming Public Law 83-280 jurisdiction over Indians. Congress agonized over the problem of increased "law and order" costs of the states and considered whether the federal government should alleviate it with a federal subsidy. But, more importantly, Congress never even considered in committee the possibility of granting taxing powers to the states through Public Law 83-280. A fair reading of the total legislative history of Public Law 83-280 proves that the act was not intended to affect existing Indian tax immunities.

Second, Congress clearly conceived Public Law 83-280 as a law and order measure. Mr. Sellery testified to Acting Commissioner Greenwood's recommendation that any federal subsidy to the states be provided through the Attorney General in the Department of Justice *because of his general administration of law and order.* The Acting Commissioner recommended against funding state subsidies

through the Johnson-O'Malley Act since that Act confers power on the Secretary of the Interior.

Mr. Sellery stressed the Bureau of Indian Affairs' recommendation that Public Law 83-280 be recast to insure its codification in the United States Code in Title 18 of the Criminal Code regarding its criminal aspect, and in title 28 of the Judicial Code regarding its civil aspect, in order to aid attorneys in determining readily what state civil and criminal jurisdiction applied to Indians of a particular state.

Discussion of Public Law 83-280 in the Subcommittee Report is invariably in terms of "the courts", "law enforcement activities among the Indians", "judicial procedure", and "general administration of law and order".

The entire legislative history of Public Law 83-280 verifies Congress' intent to meet a law and order need on Indian reservations by providing a state forum for adjudication of civil and criminal litigation arising on Indian reservations.

The Washington Court ignored the narrow purpose of the Act evident in its legislative history, however, and reasoned that the broad language referring to "civil causes of action" and "civil laws . . . of general application", when coupled with Congress' failure to expressly exclude state taxing power in Section 4(b) of the Act, constitutes an implied grant of taxing power to the State. The logic that state tax laws are civil laws of general application, and thus apply by literal interpretation of the language of the Act. But this conclusion runs afoul of the Supreme Court doctrine which prohibits application of a statute to acts which may be within the letter of the statute but which were

clearly not intended to be within its spirit by Congress. In *Holy Trinity Church v. United States*, 143 U.S. 457 (1892) the Supreme Court considered a federal statute prohibiting importation of an alien to perform labor or service. The Holy Trinity Church, a religious society of New York State, imported an alien from England to serve as its Pastor. The Supreme Court noted that the corporate act was clearly within the letter of the federal statute but held:

> "It is a familiar rule, that a thing may be within the letter of the statue and yet not within the statute, because not within its spirit, nor within the intention of its maker . . . This is not the substitution of the will of the judge for that of the legislator, for frequently words of general meaning are used in a statute, words broad enough to include an action in question, and yet a consideration of the whole legislation, or of the circumstances surrounding its enactment, or of the absurd results which follow from giving such broad meaning to the words, makes is unreasonable to believe that the legislator intended to include the particular act." (143 U.S. at 459)

The Supreme Court further stated:

> "If a literal construction of the words of a statute be absurd, the act must be so construed as to avoid the absurdity. The court must restrain the words. The object designed to be reached by the act must limit and control the literal import of the terms and phrases employed." (143 U.S. at 460)

The multiple absurdities enumerated in Section 4 of Appellant's Brief, which would result from the Washington Court's interpretation of Public Law 83-280, and which are tantamount to termination of the Colville Confederated Tribes compellingly invoke application of the *Holy Trinity Church* rule. Such absurdities are patently not within the spirit of Public Law 83-280 nor within the intention of its makers. The law and order object sought by Congress

through Public Law 83-280 must limit and control the literal import of the term "civil laws . . . of general application to private persons or private property."

3. The State of Washington Has No Residual Jurisdiction to Tax Indians and Indian Commerce Conducted on Indian Reservations

It is here that appellees ask the Supreme Court to abandon its long-standing rule that federal statutes, federal Indian tax immunities, federal Indian policies, and sovereign tribal powers will not be deemed repealed by implication, and to substitute instead the radical proposition that Public Law 83-280 destroys all powers of tribal sovereignty inconsistent with state law *unless explicitly preserved by Congress*. Implicit in appellees' request, of course, is an invitation that the Supreme Court reject its holding in *Williams v. Lee*, 358 U.S. 217 (1959) that the test whether state action applies on an Indian reservation is whether the state action infringes upon the right of the tribe to make its own laws and be ruled by them.

The essence of appellees' argument is:

> "This follows from the elementary proposition that the states have *residual jurisdiction over Indian country and Indian affairs; and they can assert that jurisdiction in imposing taxes* so long as imposition of the taxes is not expressly prohibited by over-riding congressional policy." (Emphasis supplied) (Appellees' Br., p. 13)

What "residual jurisdiction" over Indian country and Indian affairs? Under the Constitution of the United States, there is no state "residual jurisdiction" to impose state taxes upon Indian commerce on Indian reservations. This has been clear ever since *Worcester v. Georgia*, 6 Pet. 515,

was decided by this court in 1832. Appellees' "elementary proposition" runs counter to the entire body of federal Indian law. As stated in *Federal Indian Law*, 1958 (1966 printing by Association on American Indian Affairs, Inc., N.Y.) at page 845:

> "• • • State laws generally are not applicable to tribal Indians on an Indian reservation except where Congress has expressly provided that State laws shall apply. It follows that Indians and Indian property on an Indian reservation are not subject to State taxation *except by virtue of express authority conferred upon the State by act of Congress.* Conversely Indian property outside of an Indian reservation is subject to State taxation unless congressional authority for a claim of tax exemption can be found. • • • " (Emphasis supplied.)

In the field of taxation of Indians and Indian commerce on Indian reservations, federal and tribal jurisdiction exhaust the field, leaving no room for state jurisdiction to occupy. This rule remains undiminished, and appellees are unable to cite a single case to the contrary with the exception of the weak citation of *Goudy v. Meath*, 203 U.S. 146 (1906).

Indeed, an examination of the *Goudy* decision reveals the very weakness of appellees' argument. *Goudy* does not involve commercial activity of an enrolled Indian on trust land in a reservation at all! Instead, the case is concerned with state taxability of fee simple land owned by a Puyallup Indian. The Puyallup Indian was allotted in severalty pursuant to the treaty of December 26, 1854, 10 Stat. 1132 which provided state tax immunity *so long as the land was subject to state and federal restrictions.* When the restrictions were removed by the state of Washington and the federal government, the land became subject to state tax.

The Supreme Court upheld the state tax consonant with the long standing rule that fee simple land on Indian reservations is subject to state taxes. *Goudy* decided nothing new.

More important, the present case is concerned with commercial activities of a full-blood Indian trader on Indian trust land. Thus *Goudy* is totally irrelevant. The seemingly broad language quoted by appellees (Appellees' Br., p. 20), when set in context of the facts in *Goudy*, is then totally inapposite to the present case.

Had the language quoted by appellees from the *Goudy* decision been applicable to other contexts, appellant submits that the *Williams*, and *Warren Trading Post Co.*, cases would have been decided by the Supreme Court the other way.

In asking the Supreme Court to adopt their novel rule of implied repeal of federal statutes, Indian tax immunities, Indian policies and sovereign tribal powers, appellees ignore the fact that in enacting Public Law 83-280, Congress followed its own traditional policy of making its repeals explicit. In Section 2(c) of the Act, Congress repealed 18 U.S.C. Section 1152 (Applying the Federal Criminal Code to Indian reservations) and 18 U.S.C. Section 1153 (the Ten Major Crimes Act), and the Act of October 5, 1949 (63 Stat. 705, Ch. 604, applying California civil and criminal jurisdiction to the Agua Caliente Band of Mission Indians), with respect to Indian reservations thereafter subject to state Public Law 83-280 jurisdiction. But Congress did not repeal the federal trader statutes, federal Indian tax immunities, federal Indian policies or sovereign

tribal powers. When Congress specifies the laws it wishes repealed, the courts may not presume that Congress repealed other laws by implication.

4. Appellees Ignore Indian Tax Immunities Established by Congressional Policy and Protected by Decisions of the Supreme Court

Analysis of arguments 2 through 5 of appellees reveals that wholly apart from questions covering Public Law 83-280 and its effect, appellees give no consideration whatsoever to federal policies regarding self-determination of Indian tribes, Indian trading, or utilization of Indian trust land, all carefully protected by decisions of the Supreme Court.

In marked contrast to the "termination" policies of the early 1950's, our national Indian policy is now one of strengthening tribal government and fostering self-determination of Indian tribes, both socially and economically. This policy was recently enunciated by President Nixon in his historic speech to Congress of July 8, 1970:[7]

> ". . . Self-determination among the Indian people can and must be encouraged without the threat of eventual termination. In my view, in fact, that is the only way that self-determination can effectively be fostered.
>
> "This, then, must be the goal of any new national policy toward the Indian people: to strengthen the Indian's sense of autonomy without threatening his sense of community.
>
> ". . . .
>
> "Because termination is morally and legally unacceptable, because it produces bad practical results, and because the mere threat of termination tends to discourage greater self-sufficiency among Indian groups, I am asking the Congress to pass a new Con-

7. H.R. Doc. No. 91-363, 91st Cong., 2d Sess. (1970).

current Resolution which would expressly renounce, repudiate and repeal the termination policy as expressed in House Concurrent Resolution 108 of the 83rd Congress."

House Concurrent Resolution 108 of the 83rd Congress was renounced, repudiated and repealed by Senate Concurrent Resolution 26 adopted on December 11, 1971.[8]

Senate Concurrent Resolution 26 reads in part as follows:

> "*Resolved by the Senate (the House of Representatives concurring)*: That it is the sense of Congress that—
>
> . . . .
>
> "(2) this statement of national Indian policy replaces the policy set forth in House Concurrent Resolution 108, Eighty-third Congress (August 1, 1953);
>
> "(3) improving the quality and quantity of social and economic development efforts for Indian people and maximizing opportunities for Indian control and self-determination shall be a major goal of our national Indian policy."

The above stated national Indian policy simply cannot coexist with the position set forth in appellees' brief "that Indian sovereignty or self-government be subservient to state laws", that "tribal laws are no longer effective to the extent inconsistent with state laws," and that "the federal government has removed itself from general supervision of Indian affairs on Indian reservations". Appellees plainly deny that in our dual federal-state form of government, Indian tribes occupy a unique third category of "domestic dependent nation" with quasi-sovereign powers and inherent immunity from state taxation, *Worcester, supra.*

8. S. Con. Res. 26, 92nd Cong., 1st Sess., 118 Cong. Rec. S 21327 (1971).

Among their powers of sovereignty, Indian tribes themselves have the power to tax. The Supreme Court held in *McCulloch v. Maryland*, 4 Wheat. 316 (1819), that the power to tax is an attribute of sovereignty "essential to the very existence of government," and as stated in *Federal Indian Law* at page 435, the power to tax is an attribute of tribal quasi-sovereignty *which continues unless withdrawn by act of Congress or limited by treaty.*

Not only has the power to tax of the Colville Confederated Tribes not been withdrawn by Congress, it has been carefully embodied in Article V(1)(e) of the tribal constitution, and applies both to Indians and to "nonmembers doing business within the Reservation" including non-Indian customers of appellant. All sales of tobacco products by appellant and other licensed Indian traders on the Reservation are now taxed by the tribes through the Colville Tobacco Ordinance. Federal sanction is twofold; the government approved both the tribal constitution and the tobacco ordinance.

Appellees argue that application of the state tax to appellant's sales in no way interferes with the tribal power to tax, and, that even if it does, the sovereign tribal power is now subservient to state laws. But application of *both* state and tribal tax would destroy appellant's business altogether, for none but the simple minded would continue to trade with him. And in such a head-on conflict between state and tribal taxing powers, the Supreme Court has made it clear that tribal taxing power must stand supreme, *Williams, supra.*

With regard to the subject of Indian trading, appellees engage in lengthy argument to demonstrate that federal policy does not include within its scope retail sales of mer-

chandise from Indian merchants to non-members on the reservation. The argument does not withstand analysis. For as Mr. Justice Black indicated in *Warren, supra,*

> "Congress has taken the business of Indian trading on reservations so fully in hand that no room remains for state laws imposing additional burdens upon traders." 380 U.S. at 690.

And Article V(1)(e) of the tribal constitution contemplates taxation by the tribe of merchandising activities involving both Indians and non-Indians on the reservation —free from any interfering taxation by the state of Washington.

Concerning utilization of Indian trust land, appellees contend in argument 5 of their brief that no Indian governmental immunity to state taxes exists where the state taxes have only an indirect or remote effect on the government instrumentality claiming the immunity. In this contention, appellees fail to analyze properly the true basis for Indian tax immunities—namely federal instrumentality *and* federal purpose—and fail to note the direct effect of state taxation upon both in this case.

Appellees rely upon a line of Supreme Court cases of which *Oklahoma Tax Commission v. United States*, 319 U.S. 598 (1943), and *West v. Oklahoma Tax Commission*, 334 U.S. 717 (1948), are the foundation stones. In *Oklahoma Tax Commission*, the Supreme Court upheld an Oklahoma death tax on restricted cash and securities of enrolled members of the Five Civilized Tribes, arising from proceeds of sale or minerals on the Indians' restricted land. In *West* the Supreme Court upheld the Oklahoma death tax on *trust* property of Osage Indians residing on the reservation.

But appellant respectfully submits that the rule of *Oklahoma Tax Commission* and *West* is no longer valid law. The two main underpinnings of the cases were rejected by the Supreme Court in *Squire v. Capoeman*, 351 U.S. 1 (1956). In *Squire*, the Supreme Court denied application of federal capital gains tax to proceeds of sale of timber from the trust allotment of a Quinault Indian living on the reservation. While in *West*, the Supreme Court ignored as immaterial the facts that (1) to allow the Oklahoma death tax would be to allow a state lien on Indian trust property, and (2) the estate could be depleted through successive payments of state death taxes before the end of the trust period, *Squire* proceeded in the opposite direction, holding that (1) provision in the General Allotment Act for transfer of the trust property at the end of the trust period "free of all charge or encumbrance" might well be sufficient to bar federal income taxation, and (2) it is necessary to preserve the property wholly intact for the Indian—including immunity from taxation—in order that he could go forward when declared competent with the necessary chance of economic survival in competition with others.

A partial explanation for this reversal lies in the fact that at the time *Oklahoma Tax Commission* and *West* were decided, it was generally assumed that restricted trust Indian property was subject to both federal income and federal estate taxes. In *Oklahoma Tax Commission*, the Supreme Court had noted:

> "Congress cannot have intended to impose federal income and inheritance taxes on the Indians and at the same time exempt them by implication from similar state taxes." 319 U.S. at 608.

That assumption has since been proven incorrect. *Squire* held the Indian exempt from federal gains tax, and *Nash v. Wiseman*, 227 F.Supp. 552 (W.D.Okla. 1963), and *Asenap v. United States*, 283 F.Supp. 566 (W.D.Okla. 1968), extended the rule of *Squire* to federal estate taxes on Indian trust property. Thus the demand for equal treatment of state and federal taxes which concerned the Supreme Court in *Oklahoma Tax Commission* and *West* now works the other way—against taxability. *Mason v. United States*, 461 F.2d 1364 (Ct.Cl. 1972). *Squire* has reversed the presumption evident in *Oklahoma Tax Commission* and *West* that Indian tax immunity required an affirmative indication by Congress, and instead returned to the time-honored presumption that Congress should affirmatively authorize taxability if it intended to permit it.

A number of lower courts have applied *Squire* to Indians not covered by the General Allotment Act. *Kirkwood v. Arenas*, 243 F.2d 863 (9th Cir. 1957) applied *Squire to* the trust allotment of a California Mission Indian whose allotment derived from the Mission Indian Act which did not contain the "taxation" provision of the General Allotment Act. In *Big Eagle v. United States*, 300 F.2d 765 (Ct.Cl. 1962), the Court of Claims applied *Squire* to federal income tax upon income derived from Osage trust properties. *United States v. Hallam*, 304 F.2d 620 (10th Cir. 1962) applied *Squire* to the Quapaw Indians who, like the Osages, had their own allotment act.

Commercial activities located on trust land have an inherent goal of profitability and therefore partake of the tax immunity spelled out in *United States v. Rickert*, 188 U.S. 432 (1903), and *Squire, supra*. As stated in "Indian

Taxation: Underlying Policies and Present Problems", 59 Calif. L. Rev. 1261 (1971), at page 1274:

> "However, the immunity's purpose of maximizing the value of the protected land to its Indian owner can be achieved only if the land is immune from all other taxes which adversely affect its value. The real property tax exemption therefore provides a strong basis for striking down taxes on personal property, income, estates, possessory interests, and sales that defeat the purpose of the basic immunity."

The rationale of the cases cited by appellees on page 47 of their brief makes no sense when applied to Indian tax immunity cases. The rule that imposition of a pure financial burden upon the federal government is normally too remote an interference with governmental policies to be invalid rests upon the concept that the government has neither a financial interest in the instrumentality nor an interest in maximizing return from the instrumentality. For example, in *Graves v. New York*, 306 U.S. 466 (1939), the Supreme Court stated:

> "[T]he purpose of the immunity was not to confer benefits on the employees . . . or to give an advantage to that government . . . but to prevent undue interference with the one government by imposing on it the tax burdens of the other." 306 U.S. at 483.

But the central policy goal of federal policy regarding Indian trust land is profitability of the trust lands. The rationale of appellees' cases is not even altogether applicable in non-Indian cases, as shown in *Federal Land Bank v. Board of County Commissioners*, 368 U.S. 146 (1961), in which the court struck down a state tax upon a federal land bank because of a manifest federal policy of profitability of the enterprise.

Recognizing the federal policy of profitability of Indian trust land, the author of "Indian Taxation: Underlying Policies and Present Problems", *supra*, states at page 1295:

> "Taxation of sales occurring on protected Indian land diminishes the land's value by decreasing its profit potential, much as does the taxation of personal property located on such land. The reasons for invalidating taxes on personal property located on exempt Indian land similarly require that state and local taxes be struck down if they are imposed on sales occurring on such land."

The Washington tax here in question could result in liens upon the trust land and personal property of appellant contrary to federal policy regarding Indian trust land as an instrumentality. The Washington tax also decreases the profit potential of appellant's trust land contrary to the federal purpose of Indian trust land. In the face of *Squire* and *Federal Land Bank*, the Washington tax cannot apply. As stated by Judge Ely in his dissenting opinion in *Agua Caliente v. Riverside County*, 442 F.2d 1184, 1189 (9th Cir. 1971), referring to *Squire*:

> ". . . [T]he case stands for the proposition that the federal policy of protecting Indian wards is superior even to the need to collect revenue for the maintenance of the federal government itself. Surely, we should afford no less protection when the interest of the Indian ward is in conflict with an interest of a State."

5. Under Present Washington State Law and Policy, State Excise Taxes Can No Longer Be Applied to Appellant

At the time of appellant's arrest in February, 1967, appellant operated an independent business on the Colville Indian Reservation. The Colville Confederated Tribes had no tobacco ordinance; nor was appellant licensed either

by the Tribes or by the federal government. State law prohibited possession by any non-Indian in the state of untaxed cigarettes. The state policy reason for enforcing its excise tax laws against appellant at that time was pointed out by appellees in oral argument before the Washington Court:

> "Since the state has no particular, definitely has n feeling with regards to his sale to non-Indians, to Indians of the tribe, we have specifically under our cigarette tax laws allowed that Indian to purchase unstamped cigarettes. But what we are trying to control here is sale of cigarettes to non-Indians, to those citizens of the State of Washington."[9]

The problem, according to appellees was that:

> "Because a substantial amount of the territory of the state of Washington is 'Indian country' and because 'Indian country' is next to or commingled with large population centers, tax-free sales of cigarettes by Indians to the general public pose a problem of significant magnitude to the state of Washington. The state of Washington's ability to effectively enforce its cigarette tax law lies at the heart of this controversy." (Appellees' Br., p. 8)

All that has changed. The Colville Tobacco Ordinance now makes the handling and sale of all tobacco products on the reservation a tribal enterprise, and appellant's business is a licensed tribal retail outlet. Appellant operates his business pursuant to the Ordinance, his tribal license,[10] and his federal trader's license.[11] Additionally, Chapter 157, Washington Laws, 1972, 1st Ex. Sess., Section 7, provides that any person, Indian or non-Indian, may purchase and possess for personal use two cartons of cigar-

9. Transcript of Oral Argument, p. 20, ll. 17-22.

10. App. Br., p. B-2.

11. App. Br., p. B-1.

ettes at any single time without incurring tax liability under Washington law.

Since the purpose of prior state law was to control sale of cigarettes to non-Indians and since the present state law specifically allows non-Indians to purchase and possess unstamped cigarettes, the policy reason for application of state excise tax to appellant disappears, and the "heart of this controversy" has been cut out. The state cigarette excise tax law can no longer be applied to appellant *as a matter of state law.*

To hold that non-Indians could purchase untaxed cigarettes from the commissaries of military installations in Washington, and from the neighboring states of Oregon and Idaho, whose cigarettes' taxes are, respectively, 13 cents and 10 cents a package less than Washington's, but not from Indians, would be to allow a violation of the equal protection provisions of both the state and federal constitutions. And as appellees admitted to the Washington Court:

> "MR. HANSEN: We feel it would be very significant that if the federal government would so license individuals to sell cigarettes, unstamped cigarettes, we would very much have to look into our approach on the matter."[12]
>
> . . . .
>
> "And as we again assert, most strongly, the Bureau of Indian Affairs and the State of Washington has not and to date will not provide funds, loan funds to an Indian for the express purpose of selling unstamped cigarettes. If and when they do, the Department of Revenue will indeed have to re-examine the appropriate legislation in this area . . ."[13]

12. Transcript of Oral Argument, p. 23, ll. 20-22.
13. Transcript of Oral Argument, p. 26, ll. 5-9.

6. State Extension of Governmental Services to Members of the Colville Confederated Tribes Does Not Subject the Indians to State Tax Laws

One final point remains. On page 62 of their brief, appellees state:

> "The fact that the Washington Indians enjoy all the rights and privileges which are enjoyed by citizens generally, supports appellees' argument that Indians should be subjected to general state laws, including those pertaining to taxation, particularly after the assumption under PL. 83-280."

This argument that *because* members of the Colville Confederated Tribes receive state services *therefore* they should be subjected to general state tax laws with or without Public Law 83-280, had appeal for the Washington Court and must be answered.

The obvious answer was given by President Nixon in his speech to Congress on July 8, 1970, *supra*. The President stated:

> "The special relationship between Indians and the Federal Government is the result instead of solemn obligations which have been entered into by the United States Government. Down through the years, through written treaties and through formal and informal agreements, our government has made specific commitments to the Indian people. For their part, the Indians have often surrendered claims to vast tracts of land and have accepted life on government reservations. In exchange, the government has agreed to *provide community services, such as health, education and public safety*, services which would presumably allow Indian communities to enjoy a standard of living comparable to that of other Americans." (Emphasis supplied)

The Indians, including appellant, have paid their taxes in perpetuity by surrendering their vast tracts of land to

the federal government. For example, the Colville Confederated Tribes surrendered the north half of their reservation, an area comprising approximately 1.5 million acres, in the Agreement of May 9, 1891, and the north half was vacated by the Act of July 1, 1892, 27 Stat. 62 (1 Kappler 441). While the Tribes were paid $1,500,000 for the land, in 1904 there were in Ferry County alone 146 mine owners whose property and improvements were valued on the County Assessor's rolls at $880,000,000. "An Illustrated History of Stevens, Ferry, Okanogan and Chelan Counties," Richard F. Steele, Western Historical Publishing Company, 1904.

In addition, both the Bureau of Indian Affairs and the Colville Confederated Tribes themselves make large expenditures annually for social and governmental services to Indians. Expenditures of the Colville Indian Agency of the Bureau of Indian Affairs for the years 1965 through 1972, are as follows:

1965	$ 1,460,851
1966	1,174,330
1967	1,097,258
1968	1,382,860
1969	1,680,564
1970	1,783,923
1971	1,402,725
1972	2,157,711

These federal expenditures are set forth by category in Appendix A.

Expenditures of the Colville Confederated Tribes for the years 1966 through 1972 are as follows:

1966	$362,935.63
1967	431,994.51
1968	432,307.85
1969	500,817.19
1970	599,488.06
1971	536,414.00
1972	620,090.00

These tribal expenditures are set forth by category in Appendix B.

The figures of the Bureau of Indian Affairs exclude expenditures for Indian health services and other federal services provided to the general public. While tax jurisdiction does not depend upon relative expenditures, the federal and tribal expenditures listed demonstrate that the federal government has not removed itself from general supervision of the Colville Indian Reservation and that members of the Tribes are paying their own way.

CONCLUSION

The Supreme Court should not adopt appellees' radical new principles that (1) Public Law 83-280 permits all state excise tax laws to apply to Indians *by implication*, and (2) Public Law 83-280 destroys all powers of tribal sovereignty inconsistent with state law *unless explicitly preserved by Congress*. Instead, the Supreme Court should adhere to its long standing twin principles that (1) ambiguities in statutes affecting Indians will be resolved from the standpoint of the Indians, and (2) federal statutes,

Indian tax immunities, federal Indian policies, and sovereign tribal powers will not be deemed repealed by implication. Applying these principles in this case, the Supreme Court should reverse the decision of the Washington Court.

Respectfully submitted,

ZIONTZ, PIETILE & MORISSET
ROBERT L. PIETILE
Counsel for Appellant

December 1, 1972

APPENDIX A

IN REPLY REFER TO:
Budget

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
PORTLAND AREA OFFICE
POST OFFICE BOX 3785
PORTLAND, OREGON 97208

RECEIVED
NOV 13 1972
ZIONTZ, PE & MORISSET

NOV 10 1972

Ziontz, Pirtle & Morisset
Attorneys at Law
3101 Seattle-First National Bank Building
Seattle, Washington - 98104

Dear Mr. Pirtle:

This is in answer to your letter of November 8, 1972 requesting certain information concerning services furnished to the Colville Confederated Tribes and its members by the Bureau of Indian Affairs.

On the attached sheet we have shown the annual obligations by activity for the Colville Agency for Fiscal Years 1965 through 1972.

Sincerely yours,

Francis E. Briscoe

Francis E. Briscoe
Assistant Area Director
(Administration)

Enclosure (1)

COLVILLE INDIAN AGENCY
UNITED STATES DEPARTMENT OF INTERIOR, BUREAU OF INDIAN AFFA
(ANNUAL OBLIGATIONS OR EXPENDITURES BY ACTIVITY)
FISCAL 1965 THROUGH FISCAL 1972

	1965	1966	1967	1968	1969	19
Education	$ 63,320	$ 57,895	$ 55,560	$ 30,849	$ 25,132	$ 22,
Adult Education	-	-	-	22,854	21,147	26,
Social Services	30,235	40,170	43,539	41,203	50,145	43,
Housing Improvement	-	-	-	-	-	-
Relocation	772	960	808	8,561	14,307	20,
Adult Vocational Training	916	960	808	-	116	
Law and Order	52,007	29,823	16,540	13,578	12,594	15,
Forestry	337,017	378,762	349,635	356,543	375,454	666,
Range	35,938	36,261	37,460	38,617	42,250	45,
Fire Suppression	22,256	10,585	24,244	32,658	106,839	86,
Reservation Programs	16,895	17,545	18,755	19,182	21,364	15,
Housing Development	-	-	-	-	-	
Soil and Moisture Conservation	66,694	67,649	62,691	58,744	71,119	78,
Indian Water Rights	-	-	-	-	-	
Roads Maintenance	113,300	117,819	115,715	147,901	114,605	123,
Realty	93,034	97,200	102,638	97,803	93,076	108,
General Trustee Services	13,088	17,641	14,207	14,253	15,928	17,
R&M,Buildings and Utilities	61,675	55,215	66,489	49,548	58,745	74,
&M, Irrigation	3,500	-	6,294	6,636	6,636	
Indian Business Development	-	-	-	-	-	
Construction - Bldgs & Utils	7,838	36,098	17,445	9,743	4,891	36,
Roads Construction	542,366	209,747	164,430	434,187	646,216	402
	1,460,851	1,174,330	1,097,258	1,382,860	1,680,564	1,783,

Portland Area Office
November 30, 1972

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FOR REMAINDER OF PAGE

A-2 APPENDIX A

COLVILLE INDIAN AGENCY

UNITED STATES DEPARTMENT OF INTERIOR, BUREAU OF INDIAN AFFAIRS
(ANNUAL OBLIGATIONS OR EXPENDITURES BY ACTIVITY)

FISCAL 1965 THROUGH FISCAL 1972

	1965	1966	1967	1968	1969	1970	1971	1972
	$ 63,320	$ 57,895	$ 55,560	$ 30,849	$ 25,132	$ 22,759	$ 73,783	$ 155.129
	-	-	-	22,854	21,147	26,602	20,458	15,673
	30,235	40,170	43,539	41,203	50,145	43,696	43,095	46,006
	-	-	-	-	-	-	-	53,998
	772	960	808	8,561	14,307	20,369	29,021	30,348
	916	960	808	-	116	-	6,000	-
	52,007	29,823	16,540	13,578	12,594	15,361	14,141	940
	337,017	378,762	349,635	356,543	375,454	666,907	460,297	507,628
	35,938	36,261	37,460	38,617	42,250	45,531	38,550	34,865
	22,256	10,585	24,244	32,658	106,839	86,823	136,498	39,773
	16,895	17,545	18,755	19,182	21,364	15,295	27,125	29,446
	-	-	-	-	-	-	-	15,000
vation	66,694	67,649	62,691	58,744	71,119	78,699	92,717	92,968
	-	-	-	-	-	-	-	17,500
	113,300	117,819	115,715	147,901	114,605	123,499	117,141	126,888
	93,034	97,200	102,638	97,803	93,076	108,011	100,354	99,524
	13,088	17,641	14,207	14,253	15,928	17,349	12,883	13,505
es	61,675	55,215	66,489	49,548	58,745	74,186	88,059	339,227
	3,500	-	6,294	6,636	6,636	-	-	-
ent	-	-	-	-	-	-	34,540	-
ils	7,838	36,098	17,445	9,743	4,891	36,622	3,777	33,457
	542,366	209,747	164,430	434,187	646,216	402,214	104,286	505,836
	1,460,851	1,174,330	1,097,258	1,382,860	1,680,564	1,783,923	1,402,725	2,157,711

APPENDIX B

COLVILLE CONFEDERATED TRIBES OF THE COLVILLE INDIAN RESERVATI

BUDGET ITEMS FOR 1966 THROUGH 1972

	1966	1967	1968	1969	1970
1. Education:					
A) St. Mary's Mission	$20,000.00	$23,088.00	$20,000.00	20,000.00	20,000.
B) Education Scholarship	16,200.00	19,000.00	20,813.00	24,638.00	29,594.
C) Education Aid Grants	11,618.00	10,011.00	14,908.00	12,054.00	21,314.
D) Youth Camp	17,909.00	13,323.00	1,871.00	4,165.00	8,898.
E) Misc. Educational Expenses	825.00	3,167.00			
TOTAL COSTS	$66,552.00	68,589.00	57,592.00	60,857.00	79,806.
2. Health, Welfare & Community Services:					
A) Health & Sanitation	$13,861.00	9,359.00	4,150.00	10,059.00	22,822.
B) Welfare, Burial, Fire & Etc.	15,366.00	14,700.00	21,702.00	30,628.00	36,380.
C) Donations	4,976.00	2,850.00	3,295.00	4,196.00	3,544.
D) Tribal Gatherings	2,374.00	1,838.00	2,663.00	3,336.00	8,328.
E) Law & Order (Donation to Counties)	11,123.00	31,397.00	20,146.00	36,326.00	36,179.
F) Roads		2,234.00			
TOTAL COSTS	$47,700.00	62,378.00	51,956.00	84,545.00	107,253.
3. Environmental Protection & Recreation:					
A) Fire & Wildlife Propagation	$14,784.00	28,827.00	33,664.00	40,904.00	55,851.
B) Fire Control	40,157.00	44,157.00	48,514.00	55,034.00	55,855.
C) Soil, Moisture, Beautification & Range Improvement	20,014.00	16,185.00	19,154.00	11,106.00	20,000.
TOTAL COSTS	$74,955.00	89,169.00	101,332.00	107,044.00	131,706.
4. Administrative Costs:					
A) Administrative Services	$64,729.61	79,524.30	79,522.99	93,881.42	100,613.
B) Paid to Counties (for their Admin. Costs)	40,000.00	40,000.00	40,000.00	40,000.00	40,000.
C) Personnel Services	36,192.52	52,912.92	62,312.98	73,981.14	140,109.
D) General Services	32,806.50	37,187.19	39,591.88	40,508.63	
E) Roads		2,234.10			
TOTAL COSTS	$173,728.63	211,858.51	221,427.85	248,371.19	280,723.
TOTAL ANNUAL COSTS	$362,935.63	431,994.51	432,307.85	500,817.19	599,488.

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APPENDIX B

COLVILLE CONFEDERATED TRIBES OF THE COLVILLE INDIAN RESERVATION

BUDGET ITEMS FOR 1966 THROUGH 1972

	1966	1967	1968	1969	1970	1971	1972
n	$20,000.00	$23,088.00	$20,000.00	20,000.00	20,000.00	20,000.00	20,000.00
hip	16,200.00	19,000.00	20,813.00	24,638.00	29,594.00	38,250.00	31,704.00
ts	11,618.00	10,011.00	14,908.00	12,054.00	21,314.00	34,480.00	28,296.00
	17,909.00	13,323.00	1,871.00	4,165.00	8,898.00	18,443.00	14,161.00
Expenses	825.00	3,167.00				1,982.00	842.00
	$66,552.00	68,589.00	57,592.00	60,857.00	79,806.00	113,155.00	95,003.00
mmunity Services:							
	$13,861.00	9,359.00	4,150.00	10,059.00	22,822.00		
ire & Etc.	15,366.00	14,700.00	21,702.00	30,628.00	36,380.00	28,247.00	25,850.00
	4,976.00	2,850.00	3,295.00	4,196.00	3,544.00	8,313.00	8,569.00
	2,374.00	1,838.00	2,663.00	3,336.00	8,328.00	2,907.00	5,287.00
tion to Counties)	11,123.00	31,397.00	20,146.00	36,326.00	36,179.00	(discontinued)	
		2,234.00					
	$47,700.00	62,378.00	51,956.00	84,545.00	107,253.00	39,467.00	39,706.00
on & Recreation:							
pagation	$14,784.00	28,827.00	33,664.00	40,904.00	55,851.00	81,814.00	94,140.00
	40,157.00	44,157.00	48,514.00	55,034.00	55,855.00	52,549.00	52,144.00
utification &	20,014.00	16,185.00	19,154.00	11,106.00	20,000.00	23,000.00	20,873.00
nt							
	$74,955.00	89,169.00	101,332.00	107,044.00	131,706.00	157,363.00	167,157.00
ices	$64,729.61	79,524.30	79,522.99	93,881.42	100,613.80	85,697.00	113,776.00
r their Admin. Costs)	40,000.00	40,000.00	40,000.00	40,000.00	40,000.00	(discontinued)	
	36,192.52	52,912.92	62,312.98	73,981.14	140,109.26	140,732.00	204,448.00
	32,806.50	37,187.19	39,591.88	40,508.63			
		2,234.10					
	$173,728.63	211,858.51	221,427.85	248,371.19	280,723.06	226,429.00	318,224.00
	$362,935.63	431,994.51	432,307.85	500,817.19	599,488.06	536,414.00	620,090.00

APPENDIX B

EXPLANATION OF TRIBAL EXPENDITURES

1. EDUCATION.

(a) *St. Mary's Mission*—St. Mary's Mission is an all-Indian Institution with instruction through the first six grades. The Mission operates on a budget of approximately $100,000 per annum. Of this amount, $15,000 comes from student per capita and $20,000 from Tribal funds. Per capita funds are generated by Tribal business activities. This Mission serves not only as an Educational Institution but also provides recreational facilities, spiritual guidance and, most importantly, a home environment for those children who otherwise would have no home.

(b) *Education Scholarships and Grants*—The Colville Confederated Tribes donate each year an average of $44,700 in the form of two or four year scholarships and immediate need to Tribal members attending either vocational or liberal arts institutions.

(c) *Youth Camp*—Tribal expenditures for the Youth Camp average $11,252 per year. The camp offers recreation and lessons in Colville arts, crafts, and culture thus insuring the continuation of Colville heritage.

(d) *Miscellaneous Educational Expenses* — Miscellaneous matters not covered under items (a)-(c) above.

2. HEALTH, WELFARE AND COMMUNITY SERVICES.

(a) *Health & Sanitation*—From the period beginning in 1963 and ending in 1971 the Tribe contributed to the Public Health Service approximately 10% of the funds required for a Sanitation and Construction Project.

(b) *Welfare, Burial and Aid to Fire Victims*—The Tribe contributes an annual average of $24,700 for:

(1) Needy families who are not eligible for State aid;

(2) All burial services for those Tribal members and often for unenrolled infants;

(3) Granting funds to those families who are left homeless due to fire.

(c) *Donations*—The Tribe donates an annual average of $5,100 for worthwhile Community Services such as the Boy & Girl Scouts, Town & County Fairs, Little League and a variety of other community causes.

(d) *Tribal Gatherings*—These expenditures cover maintenance and upkeep of celebration grounds which are the center of Tribal activity. Traditional feasts and ceremonies are held for the enjoyment of all the Tribal members.

(e) *Law & Order (Paid to the Counties)*—Until 1971 the Colville Tribes gave an average of $19,300 to Okanogan and Ferry Counties for law enforcement. Because the State could not adequately protect the reservation and because of advice of legal counsel, these payments were discontinued in 1971.

(f) *Roads*—Repair and maintenance of roads not covered in BIA budget.

3. Environmental Protection & Recreation.

(a) Fish & Wildlife Propagation.

An annual average of $50,000 is spent by the Tribes in the form of salaries for Tribal Game Wardens and Law enforcement Officials. As stated previously in section 2(e), State law enforcement Officers cannot adequately protect the Colville Reservation hence these officers have the responsibility of properly protecting our Fish & Wildlife, the natural resources and arresting violators within the bounds of this reservation.

(b) *Fire Control*—The Colville Indian Reservation has large quantities of Timber spread over a very large area and logging is the primary source of income to the Tribes. Extreme care is taken to protect this timber in the form of selective logging, planting seedlings and especially fire control. Fire control not only protects our source of income but more important, protects the environment with which different species of wildlife thrive.

(c) *Soil, Moisture, Beautification & Range Improvement*—In 1966-67, the Tribes funded three positions under Soil

& Moisture Conservation; one full time labor foreman and two laborers. The labor foreman supervised permittees, laborers and lessees in the installation and construction of improvements on agricultural lands. A major portion of the Range Technician's time was spent on the Tribal Range Improvement Program which included grazing permit compliance checks and utilization checking and mapping.

From 1969-71, positions of Range Technician and Soil Conservation were funded by the Tribe. Their work consisted of carrying out the Tribal Range Improvement Program, contacting Tribal members who wanted to go into the livestock business or to increase their herd yields, planting grass seed, locating springs and a variety of tasks which involved Range Land.

4. ADMINISTRATIVE COSTS.

(a) *Administrative Services*—These are the costs that enable our Business Council to function as the governing body of the Colville Confederated Tribes.

(b) *Administrative Costs Paid to Counties*—Until 1971 $40,000 per year was paid to Okanogan and Ferry Counties pursuant to a purported agreement between the counties and the Tribes. These payments were discontinued in 1971 on the grounds that the Tribes were in fact providing the services for themselves and on the advice of legal counsel that the purported agreement was void and without consideration.

(c) *Personnel Services*—These are the costs sustained by the Tribes for supporting services e.g., Enrollment Officer, executive Secretary, recording Secretary, etc. The primary function of these positions is to carry on the day to day business activities and decisions made by the Council committees.

(d) *General Services*—General services are overhead required to operate any type of Government organization, e.g., janitorial services, telephone, mail, payroll taxes, etc. These were combined with personnel services from 1970 on.

(e) *Roads*—Administrative costs related to roads not included in BIA road budget.